



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 8, 2011

CBCA 2323-RELO

In the Matter of SCOTT D. HURST

Scott D. Hurst, Elkhorn, NE, Claimant.

Anne Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Department of the Army, Millington, TN, appearing for Department of the Army.

GOODMAN, Board Judge.

Claimant, Scott D. Hurst, is a civilian employee of the Army Corps of Engineers. He asks this Board to review the agency's denial of reimbursement of costs incurred during a permanent change of station (PCS) move.

Factual Background

Claimant's PCS orders transferring him from Yokosuka, Japan, to Omaha, Nebraska, authorized 120 days temporary quarters subsistence expenses (TQSE). On July 15, 2010, he executed an "Agreement for Purchaser to Occupy Prior to Closing" (the agreement) with regard to a home he purchased as a permanent residence in Omaha. The agreement states that the purchaser will occupy and rent the residence from August 19 to September 3, 2010, and will thereafter purchase the residence on the latter date.

Claimant submitted a voucher claiming TQSE for the period that he rented the residence prior to the closing. The agency denied the claim for TQSE for this period because the claimant intended when he occupied the residence that it would be his permanent residence. Claimant questions why he has been denied reimbursement of TQSE while he rented the residence, stating that his household goods (HHG) were not delivered until August 25, 2010, and he did not close on the residence until September 3, 2010.

Discussion

The Federal Travel Regulation (FTR) at 41 CFR 302-6.14 (2010) states:

How is my TQSE allowance affected if my temporary quarters become my permanent residence quarters?

If your temporary residence quarters become your permanent residence quarters, you may receive your TQSE allowance only if you show in a manner satisfactory to your agency that you initially intended to occupy the quarters temporarily.

Claimant states that at the time he entered into the rental agreement with the seller of the home, “I clearly considered this as renting temporary quarters.” However, the terms of the agreement clearly evidence claimant’s intent before he occupied the quarters that he would purchase the quarters as a permanent residence. Thus, claimant did not fulfill the requirements of the above regulation, as he did not show in a manner satisfactory to the agency that he initially intended to occupy the quarters temporarily. *See, e.g., Kolin A. Van Winkle*, CBCA 510-RELO, 07-1 BCA ¶ 33,507.

Claimant states that if he had he rented another apartment or a hotel room before he closed on the residence, instead of renting the residence, he would have been entitled to TQSE. In resolving this case, the Board cannot consider the consequences of what claimant might have done. Rather, we consider what claimant actually did. Because claimant knew before he occupied the residence as a renter that he would purchase it as a permanent residence, his entitlement to TQSE ended when he took occupancy of the residence.

Claimant cites *George S. Chaconas*, GSBCA 14278-RELO, 98-1 BCA ¶ 29,728, and *Thomas R. Montgomery*, GSBCA 14888-RELO, 99-2 BCA ¶ 30,427. These cases are not applicable to claimant’s situation, as they apply to an employee who remains briefly in his or her empty residence at the old duty station. The empty residence is deemed to be constructively vacated and therefore temporary quarters because of the employee will soon depart to the new duty station. On the other hand, when an employee moves into a new residence at the new duty station with a commitment to purchase the residence, the residence is deemed to be permanent quarters on the day of occupancy, even if the employee does not as yet have title to the residence or HHG.

The agency correctly denied reimbursement of TQSE to claimant for the period in which he rented his residence prior to closing.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge